CONTRACTS—IMPOSSIBILITY—TEACHER'S CLAIM TO SALARY FOR TIME DURING WHICH SCHOOL WAS CLOSED BY HEALTH BOARD.—Plaintiff sued township trustees under a contract for employment as school teacher, to recover salary for twenty-seven days during which the school had been closed by the county board of health, acting under authority granted by statute. Defense of township trustees was based upon impossibility of performance as an excuse. *Held,* that the defense was good. *Gregg School Tp., Morgan Co.* v. *Hinshaw,* (Ind., 1921) 132 N. E. 586.

Cases similar to the principal case have not been infrequent in recent years. See 18 MICH. L. REV. 796. In the principal case, as in these cases generally, the decision is put upon the ground that performance was impossible, and therefore excused. The court states as the rule that "when performance becomes impossible, non-performance is excused, and no damages can be recovered." It is submitted, however, that performance by the trustees of the promise sued upon, viz., the promise to pay salary, was not impossible, (nor prevented by law); and furthermore, that impossibility does not necessarily excuse in every case. The real basis for the defendant's defense would seem to have been failure by plaintiff to perform the services which were the condition precedent to his right to recover the salary. *Amer. Mercantile Exch.* v. *Blunt,* 102 Me. 128. See WILLISTON ON CONTRACTS, secs. 838, 1972 and 1973. On this theory the plaintiff could recover only by showing that he was excused from performing this condition. The only valid excuse, in a case like the principal case, where the condition is at the same time the consideration for the defendant's promise, is that the promisor has waived, or prevented the performance of, or materially increased the difficulty of performing such condition precedent. *Melville* v. *DeWolf,* 4 E. & B. 844; *New York Life Ins. Co.* v. *Statham,* 93 U. S. 24. But see *Schoelkopf* v. *Moerbach Brewing Co.,* 184 N. Y. Supp. 267. The second criticism, which pertains to the court's statement of the rule in regard to impossibility, raises the much mooted question as to just how far impossibility excuses. That the rule as here given is too broad would seem to be evident from even a superficial examination of the authorities. *Columbus Ry., Power & Light Co.* v. *City of Columbus,* 249 U. S. 399; *Mascall* v. *Reitmeier,* 145 Minn. 214. To accept the language of the court as an exact statement of the rule would involve an unwarranted extension of the limits of impossibility as a defense. See 17 MICH. L. REV. 412 and 689; 18 MICH. L. REV. 589, and L. R. A. 1916 F 10. It is probable that the court did not intend the rule as given to be taken without qualifications and exceptions. If so, we can only say that such broad, unguarded statements are to be deprecated as misleading, especially where there is no indication in the language used that the court is speaking in general terms.

CRIMES—INDICTMENT—ALLEGATION OF IMPLIED ELEMENT IN STATUTORY CRIME.—A statute required the driver of an automobile striking a person to stop, render assistance, and give certain information on request, and it provided a penalty for failure to do so. The defendant was charged with doing acts as set out in the statute, the indictment failing to allege that he